

# SENATE BILL No. 261

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-1-9; IC 34-24-5; IC 35-50.

**Synopsis:** Bias crimes. Requires law enforcement officers to receive training in identifying, responding to, and reporting bias motivated crimes in which the person who committed a criminal offense selected the victim who was injured or whose property was damaged because of the individual's actual or perceived race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity. Allows an individual who suffers a personal injury or property damage because of a criminal offense or delinquent act to bring a civil action to recover damages, including punitive damages, if the person who committed the criminal offense or delinquent act that caused the injury or property damage selected the individual because of the individual's actual or perceived race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity. Establishes a sentencing procedure that requires a court, when sentencing an individual who has committed a crime that is motivated by a bias against another individual's race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity, to impose an additional fixed term of imprisonment not to exceed five years.

**Effective:** July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Corrections & Criminal Law.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 261

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-1-9, AS AMENDED BY P.L.117-2015,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 9. (a) The board shall adopt in accordance with  
4 IC 4-22-2 all necessary rules to carry out the provisions of this chapter.  
5 The rules, which shall be adopted only after necessary and proper  
6 investigation and inquiry by the board, shall include the establishment  
7 of the following:  
8 (1) Minimum standards of physical, educational, mental, and  
9 moral fitness which shall govern the acceptance of any person for  
10 training by any law enforcement training school or academy  
11 meeting or exceeding the minimum standards established  
12 pursuant to this chapter.  
13 (2) Minimum standards for law enforcement training schools  
14 administered by towns, cities, counties, law enforcement training  
15 centers, agencies, or departments of the state.  
16 (3) Minimum standards for courses of study, attendance  
17 requirements, equipment, and facilities for approved town, city,



1 county, and state law enforcement officer, police reserve officer,  
2 and conservation reserve officer training schools.

3 (4) Minimum standards for a course of study on cultural diversity  
4 awareness, including training on the U nonimmigrant visa created  
5 through the federal Victims of Trafficking and Violence  
6 Protection Act of 2000 (P.L. 106-386) that must be required for  
7 each person accepted for training at a law enforcement training  
8 school or academy. Cultural diversity awareness study must  
9 include an understanding of cultural issues related to race,  
10 religion, gender, age, domestic violence, national origin, and  
11 physical and mental disabilities.

12 (5) Minimum qualifications for instructors at approved law  
13 enforcement training schools.

14 (6) Minimum basic training requirements which law enforcement  
15 officers appointed to probationary terms shall complete before  
16 being eligible for continued or permanent employment.

17 (7) Minimum basic training requirements which law enforcement  
18 officers appointed on other than a permanent basis shall complete  
19 in order to be eligible for continued employment or permanent  
20 appointment.

21 (8) Minimum basic training requirements which law enforcement  
22 officers appointed on a permanent basis shall complete in order  
23 to be eligible for continued employment.

24 (9) Minimum basic training requirements for each person  
25 accepted for training at a law enforcement training school or  
26 academy that include six (6) hours of training in interacting with:

27 (A) persons with autism, mental illness, addictive disorders,  
28 intellectual disabilities, and developmental disabilities;

29 (B) missing endangered adults (as defined in IC 12-7-2-131.3);  
30 and

31 (C) persons with Alzheimer's disease or related senile  
32 dementia;

33 to be provided by persons approved by the secretary of family and  
34 social services and the board. The training must include an  
35 overview of the crisis intervention teams.

36 (10) Minimum standards for a course of study on human and  
37 sexual trafficking that must be required for each person accepted  
38 for training at a law enforcement training school or academy and  
39 for inservice training programs for law enforcement officers. The  
40 course must cover the following topics:

41 (A) Examination of the human and sexual trafficking laws  
42 (IC 35-42-3.5).



- 1 (B) Identification of human and sexual trafficking.
- 2 (C) Communicating with traumatized persons.
- 3 (D) Therapeutically appropriate investigative techniques.
- 4 (E) Collaboration with federal law enforcement officials.
- 5 (F) Rights of and protections afforded to victims.
- 6 (G) Providing documentation that satisfies the Declaration of
- 7 Law Enforcement Officer for Victim of Trafficking in Persons
- 8 (Form I-914, Supplement B) requirements established under
- 9 federal law.
- 10 (H) The availability of community resources to assist human
- 11 and sexual trafficking victims.
- 12 (b) A law enforcement officer appointed after July 5, 1972, and
- 13 before July 1, 1993, may not enforce the laws or ordinances of the state
- 14 or any political subdivision unless the officer has, within one (1) year
- 15 from the date of appointment, successfully completed the minimum
- 16 basic training requirements established under this chapter by the board.
- 17 If a person fails to successfully complete the basic training
- 18 requirements within one (1) year from the date of employment, the
- 19 officer may not perform any of the duties of a law enforcement officer
- 20 involving control or direction of members of the public or exercising
- 21 the power of arrest until the officer has successfully completed the
- 22 training requirements. This subsection does not apply to any law
- 23 enforcement officer appointed before July 6, 1972, or after June 30,
- 24 1993.
- 25 (c) Military leave or other authorized leave of absence from law
- 26 enforcement duty during the first year of employment after July 6,
- 27 1972, shall toll the running of the first year, which shall be calculated
- 28 by the aggregate of the time before and after the leave, for the purposes
- 29 of this chapter.
- 30 (d) Except as provided in subsections (e), (l), (r), and (s), a law
- 31 enforcement officer appointed to a law enforcement department or
- 32 agency after June 30, 1993, may not:
- 33 (1) make an arrest;
- 34 (2) conduct a search or a seizure of a person or property; or
- 35 (3) carry a firearm;
- 36 unless the law enforcement officer successfully completes, at a board
- 37 certified law enforcement academy or at a law enforcement training
- 38 center under section 10.5 or 15.2 of this chapter, the basic training
- 39 requirements established by the board under this chapter.
- 40 (e) This subsection does not apply to:
- 41 (1) a gaming agent employed as a law enforcement officer by the
- 42 Indiana gaming commission; or



(2) an:

(A) attorney; or

(B) investigator;

designated by the securities commissioner as a police officer of the state under IC 23-19-6-1(k).

Before a law enforcement officer appointed after June 30, 1993, completes the basic training requirements, the law enforcement officer may exercise the police powers described in subsection (d) if the officer successfully completes the pre-basic course established in subsection (f). Successful completion of the pre-basic course authorizes a law enforcement officer to exercise the police powers described in subsection (d) for one (1) year after the date the law enforcement officer is appointed.

(f) The board shall adopt rules under IC 4-22-2 to establish a pre-basic course for the purpose of training:

(1) law enforcement officers;

(2) police reserve officers (as described in IC 36-8-3-20); and

(3) conservation reserve officers (as described in IC 14-9-8-27);

regarding the subjects of arrest, search and seizure, the lawful use of force, interacting with individuals with autism, and the operation of an emergency vehicle. The pre-basic course must be offered on a periodic basis throughout the year at regional sites statewide. The pre-basic course must consist of at least forty (40) hours of course work. The board may prepare the classroom part of the pre-basic course using available technology in conjunction with live instruction. The board shall provide the course material, the instructors, and the facilities at the regional sites throughout the state that are used for the pre-basic course. In addition, the board may certify pre-basic courses that may be conducted by other public or private training entities, including postsecondary educational institutions.

(g) The board shall adopt rules under IC 4-22-2 to establish a mandatory inservice training program for police officers and police reserve officers (as described in IC 36-8-3-20). After June 30, 1993, a law enforcement officer who has satisfactorily completed basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the officer satisfactorily completes the mandatory inservice training requirements established by rules adopted by the board. Inservice training must include training in interacting with persons with mental illness, addictive disorders, intellectual disabilities, autism, developmental disabilities, and Alzheimer's disease or related senile dementia, to be provided by persons approved by the



1 secretary of family and social services and the board, and training  
 2 concerning human and sexual trafficking and high risk missing persons  
 3 (as defined in IC 5-2-17-1). The board may approve courses offered by  
 4 other public or private training entities, including postsecondary  
 5 educational institutions, as necessary in order to ensure the availability  
 6 of an adequate number of inservice training programs. The board may  
 7 waive an officer's inservice training requirements if the board  
 8 determines that the officer's reason for lacking the required amount of  
 9 inservice training hours is due to either of the following:

10 (1) An emergency situation.

11 (2) The unavailability of courses.

12 (h) The board shall also adopt rules establishing a town marshal  
 13 basic training program, subject to the following:

14 (1) The program must require fewer hours of instruction and class  
 15 attendance and fewer courses of study than are required for the  
 16 mandated basic training program.

17 (2) Certain parts of the course materials may be studied by a  
 18 candidate at the candidate's home in order to fulfill requirements  
 19 of the program.

20 (3) Law enforcement officers successfully completing the  
 21 requirements of the program are eligible for appointment only in  
 22 towns employing the town marshal system (IC 36-5-7) and having  
 23 not more than one (1) marshal and two (2) deputies.

24 (4) The limitation imposed by subdivision (3) does not apply to an  
 25 officer who has successfully completed the mandated basic  
 26 training program.

27 (5) The time limitations imposed by subsections (b) and (c) for  
 28 completing the training are also applicable to the town marshal  
 29 basic training program.

30 (6) The program must require training in interacting with  
 31 individuals with autism.

32 (i) The board shall adopt rules under IC 4-22-2 to establish an  
 33 executive training program. The executive training program must  
 34 include training in the following areas:

35 (1) Liability.

36 (2) Media relations.

37 (3) Accounting and administration.

38 (4) Discipline.

39 (5) Department policy making.

40 (6) Lawful use of force.

41 (7) Department programs.

42 (8) Emergency vehicle operation.



(9) Cultural diversity.

(j) A police chief shall apply for admission to the executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the executive training program within six (6) months of the date the police chief initially takes office. However, if space in the executive training program is not available at a time that will allow completion of the executive training program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available executive training program that is offered after the police chief initially takes office.

(k) A police chief who fails to comply with subsection (j) may not continue to serve as the police chief until completion of the executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city;
- (2) the police chief of any town having a metropolitan police department; and
- (3) the chief of a consolidated law enforcement department established under IC 36-3-1-5.1.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the executive training program.

(l) A fire investigator in the division of fire and building safety appointed after December 31, 1993, is required to comply with the basic training standards established under this chapter.

(m) The board shall adopt rules under IC 4-22-2 to establish a program to certify handgun safety courses, including courses offered in the private sector, that meet standards approved by the board for training probation officers in handgun safety as required by IC 11-13-1-3.5(3).

(n) The board shall adopt rules under IC 4-22-2 to establish a refresher course for an officer who:

- (1) is hired by an Indiana law enforcement department or agency as a law enforcement officer;
- (2) has not been employed as a law enforcement officer for at least two (2) years and less than six (6) years before the officer is hired under subdivision (1) due to the officer's resignation or retirement; and
- (3) completed at any time a basic training course certified by the board before the officer is hired under subdivision (1).

(o) The board shall adopt rules under IC 4-22-2 to establish a



1 refresher course for an officer who:

2 (1) is hired by an Indiana law enforcement department or agency  
3 as a law enforcement officer;

4 (2) has not been employed as a law enforcement officer for at  
5 least six (6) years and less than ten (10) years before the officer  
6 is hired under subdivision (1) due to the officer's resignation or  
7 retirement;

8 (3) is hired under subdivision (1) in an upper level policymaking  
9 position; and

10 (4) completed at any time a basic training course certified by the  
11 board before the officer is hired under subdivision (1).

12 A refresher course established under this subsection may not exceed  
13 one hundred twenty (120) hours of course work. All credit hours  
14 received for successfully completing the police chief executive training  
15 program under subsection (i) shall be applied toward the refresher  
16 course credit hour requirements.

17 (p) Subject to subsection (q), an officer to whom subsection (n) or  
18 (o) applies must successfully complete the refresher course described  
19 in subsection (n) or (o) not later than six (6) months after the officer's  
20 date of hire, or the officer loses the officer's powers of:

21 (1) arrest;

22 (2) search; and

23 (3) seizure.

24 (q) A law enforcement officer who has worked as a law enforcement  
25 officer for less than twenty-five (25) years before being hired under  
26 subsection (n)(1) or (o)(1) is not eligible to attend the refresher course  
27 described in subsection (n) or (o) and must repeat the full basic training  
28 course to regain law enforcement powers. However, a law enforcement  
29 officer who has worked as a law enforcement officer for at least  
30 twenty-five (25) years before being hired under subsection (n)(1) or  
31 (o)(1) and who otherwise satisfies the requirements of subsection (n)  
32 or (o) is not required to repeat the full basic training course to regain  
33 law enforcement power but shall attend the refresher course described  
34 in subsection (n) or (o) and the pre-basic training course established  
35 under subsection (f).

36 (r) This subsection applies only to a gaming agent employed as a  
37 law enforcement officer by the Indiana gaming commission. A gaming  
38 agent appointed after June 30, 2005, may exercise the police powers  
39 described in subsection (d) if:

40 (1) the agent successfully completes the pre-basic course  
41 established in subsection (f); and

42 (2) the agent successfully completes any other training courses





established by the Indiana gaming commission in conjunction with the board.

(s) This subsection applies only to a securities enforcement officer designated as a law enforcement officer by the securities commissioner. A securities enforcement officer may exercise the police powers described in subsection (d) if:

(1) the securities enforcement officer successfully completes the pre-basic course established in subsection (f); and

(2) the securities enforcement officer successfully completes any other training courses established by the securities commissioner in conjunction with the board.

(t) As used in this section, "upper level policymaking position" refers to the following:

(1) If the authorized size of the department or town marshal system is not more than ten (10) members, the term refers to the position held by the police chief or town marshal.

(2) If the authorized size of the department or town marshal system is more than ten (10) members but less than fifty-one (51) members, the term refers to:

(A) the position held by the police chief or town marshal; and

(B) each position held by the members of the police department or town marshal system in the next rank and pay grade immediately below the police chief or town marshal.

(3) If the authorized size of the department or town marshal system is more than fifty (50) members, the term refers to:

(A) the position held by the police chief or town marshal; and

(B) each position held by the members of the police department or town marshal system in the next two (2) ranks and pay grades immediately below the police chief or town marshal.

(u) This subsection applies only to a correctional police officer employed by the department of correction. A correctional police officer may exercise the police powers described in subsection (d) if:

(1) the officer successfully completes the pre-basic course described in subsection (f); and

(2) the officer successfully completes any other training courses established by the department of correction in conjunction with the board.

**(v) This subsection applies to the following:**

**(1) Minimum basic training program required under subsection (d).**

**(2) Mandatory inservice training program required under**



subsection (g).

(3) Town marshal basic training program required under subsection (h).

(4) Police chief executive training program required under subsection (j).

(5) Any other training program for which the board adopts standards.

After December 31, 2016, the standards adopted by the board for each program described in this subsection must include requirements for mandatory training in identifying, responding to, and reporting bias motivated crimes in which the person who committed the offense selected the victim who was injured or whose property was damaged or otherwise affected because of the actual or perceived race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity of the victim.

SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

**Chapter 5. Civil Action for Victims of Bias Motivated Crimes**

**Sec. 1.** This chapter applies only to causes of action that accrue after June 30, 2016.

**Sec. 2.** As used in this chapter, "bias motivated offender" means a person:

(1) who:

(A) committed a:

(i) criminal offense; or

(ii) delinquent act that would be a criminal offense if committed by an adult;

that injured an individual; and

(B) selected the individual as the victim of the criminal offense or delinquent act because of the actual or perceived race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity of the victim;

or

(2) who:

(A) committed a:

(i) criminal offense; or

(ii) delinquent act that would be a criminal offense if committed by an adult;

that damaged or otherwise affected property; and

(B) damaged or otherwise affected the property because of



the actual or perceived race, color, creed, disability, national origin, religion, sexual orientation, gender, or gender identity of the individual who owned or occupied the property.

**Sec. 3. If an individual suffers a pecuniary loss because of the commission of a criminal offense or delinquent act by a bias motivated offender, the individual may bring a civil action against the bias motivated offender who caused the loss.**

**Sec. 4. An individual bringing an action under section 3 of this chapter may seek to recover the following:**

- (1) Actual, compensatory, and consequential damages, including damages for emotional distress.
- (2) Punitive damages.
- (3) The costs of the action.
- (4) Reasonable attorney's fees.

**Sec. 5. Notwithstanding IC 34-31-4, a parent or guardian of a child is liable for damages awarded under this chapter if:**

- (1) the child is a bias motivated offender liable for damages awarded under this chapter;
- (2) the parent or guardian has custody of the child; and
- (3) the child is living with the parent or guardian.

**Sec. 6. This chapter does not limit a person's rights or remedies under any other state or federal law.**

SECTION 3. IC 35-50-1-2, AS AMENDED BY P.L.238-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) As used in this section, "crime of violence" means the following:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).
- (9) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (10) Child molesting (IC 35-42-4-3).
- (11) Sexual misconduct with a minor as a Level 1 felony under IC 35-42-4-9(a)(2) or a Level 2 felony under IC 35-42-4-9(b)(2).
- (12) Robbery as a Level 2 felony or a Level 3 felony (IC 35-42-5-1).
- (13) Burglary as a Level 1 felony, Level 2 felony, Level 3 felony,



or Level 4 felony (IC 35-43-2-1).

(14) Operating a vehicle while intoxicated causing death (IC 9-30-5-5).

(15) Operating a vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4).

(16) Resisting law enforcement as a felony (IC 35-44.1-3-1).

(17) Unlawful possession of a firearm by a serious violent felon (IC 35-47-4-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (e) or (f) the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8, ~~and~~ IC 35-50-2-10 (before its repeal), **and IC 35-50-2-18**, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the period described in subsection (d).

(d) Except as provided in subsection (c), the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct may not exceed the following:

(1) If the most serious crime for which the defendant is sentenced is a Level 6 felony, the total of the consecutive terms of imprisonment may not exceed four (4) years.

(2) If the most serious crime for which the defendant is sentenced is a Level 5 felony, the total of the consecutive terms of imprisonment may not exceed seven (7) years.

(3) If the most serious crime for which the defendant is sentenced is a Level 4 felony, the total of the consecutive terms of imprisonment may not exceed fifteen (15) years.

(4) If the most serious crime for which the defendant is sentenced is a Level 3 felony, the total of the consecutive terms of imprisonment may not exceed twenty (20) years.

(5) If the most serious crime for which the defendant is sentenced is a Level 2 felony, the total of the consecutive terms of



1 imprisonment may not exceed thirty-two (32) years.

2 (6) If the most serious crime for which the defendant is sentenced  
3 is a Level 1 felony, the total of the consecutive terms of  
4 imprisonment may not exceed forty-two (42) years.

5 (e) If, after being arrested for one (1) crime, a person commits  
6 another crime:

7 (1) before the date the person is discharged from probation,  
8 parole, or a term of imprisonment imposed for the first crime; or

9 (2) while the person is released:

10 (A) upon the person's own recognizance; or

11 (B) on bond;

12 the terms of imprisonment for the crimes shall be served consecutively,  
13 regardless of the order in which the crimes are tried and sentences are  
14 imposed.

15 (f) If the factfinder determines under IC 35-50-2-11 that a person  
16 used a firearm in the commission of the offense for which the person  
17 was convicted, the term of imprisonment for the underlying offense and  
18 the additional term of imprisonment imposed under IC 35-50-2-11  
19 must be served consecutively.

20 SECTION 4. IC 35-50-2-18 IS ADDED TO THE INDIANA CODE  
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
22 1, 2016]: **Sec. 18. (a) As used in this section, "bias crime offender"**  
23 **means an individual described in subsection (b).**

24 **(b) The state may seek to have an individual sentenced as a bias**  
25 **crime offender by alleging, on a page separate from the rest of the**  
26 **charging instrument, that the individual knowingly or**  
27 **intentionally:**

28 **(1) selected another individual injured; or**

29 **(2) damaged or otherwise affected property;**

30 **by an offense committed by the individual named as defendant in**  
31 **the charging instrument because of the race, color, creed,**  
32 **disability, national origin, religion, sexual orientation, gender, or**  
33 **gender identity of the injured individual or of the owner or**  
34 **occupant of the affected property.**

35 **(c) If an individual alleged to be a bias crime offender is**  
36 **convicted of an offense, the court, at the sentencing hearing for the**  
37 **offense, shall determine whether the individual is a bias crime**  
38 **offender.**

39 **(d) If, after the sentencing hearing, the court finds that the**  
40 **individual convicted of the offense that is the subject of the hearing**  
41 **is a bias crime offender based on proof beyond a reasonable doubt,**  
42 **the court shall sentence the individual to an additional fixed term**



1 of not more than five (5) years to be added to the term of  
2 imprisonment imposed under this chapter or IC 35-50-3.

